IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-01-2007

CORAM

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

WRIT PETITION No.11120 OF 2001

K.Sumathi ... Petitioner

-vs-

1.Eka Ratchagar Sabai Higher Secondary School,
rep.by its Correspondent,
Salaiputhur,
Asirvathapuram (P.O.),
Tuticorin District.

2.The Chief Educational Officer,
Tuticorin.

3.Smt.D.Sumathi Mispa Maharani ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus.

For petitioner : Mr.D.Hariparanthaman

For respondent 1 : Mr.G.S.Thambi for M/s.K.Ravichandra Babu and Mr.T.S.Sivagnanam.

For respondent 2 : Mrs.C.K.Vishnu Priya
Govt.Advocate.

For respondent 3 : K.Vijayaraman

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Clash between the right of the minority educational institution and the right of the meritorious teacher of the same institution is involved in this writ.

2. The interesting and important points are posed for decision before this Court and they may lead to some controversies or consequences, but there will be an ultimate solace to the respectable teachers' community.

3. A most memorable saying "Gurubrahma Guruvishnu Gurudevo

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Maheswaraha Gurusakshath Parabrahma Tasmaisree Guruvennamaha" is to be remembered by the humanity and every human being, as all of us are students till death.

4. The challenge before me is on the appointment of a stranger as teacher, ignoring the inservice candidate.

5. The facts necessary for disposal of the writ are as follows :

5.1. Eka Ratchagar Sabai Higher Secondary School, first respondent, is an aided private school within the meaning of Section 2 (7) of the Tamil Nadu Recognised Private Schools (Regulation) Act,1973, hereinafter referred to as "the Act".

5.2. The undisputed fact is that the Government of Tamil Nadu is providing grant-in-aid to the said school and the school is governed by the provisions of the Act 29 of 1974.

5.3. Petitioner joined as a teacher in the school as a Tamil Pandit and is working from 01.07.1982. She possessed the following qualifications viz., B.Lit., M.A.(Tamil), B.Ed.(Tamil) and M.Ed. She also underwent Tamil Pandit Training and received appreciation from the management, colleagues as well as the students and also incentives by way of increments, for acquiring higher qualifications.

5.4. The grievance of the petitioner is that ignoring her meritorious service to the school right from 01.07.1982 i.e., nearly 20 years and ignoring her seniority and suitability apart from eligibility, Mrs.Patti Jeeva Malar was directly recruited as P.G.Assistant in Tamil in 1986 and the petitioner was overlooked and it is contrary to rules. Petitioner suffered it silently.

5.5. The said Jeeva Malar is now promoted as Headmistress from 01.06.2001, consequent to the superannuation of the former Headmaster Mr.Daniel.

5.6. Due to the promotion of Mrs.Jeeva Malar, the post of P.G.Assistant in Tamil fell vacant and the petitioner is again legitimately expecting for the same being the senior most eligible teacher available in the school with more eligibility than what is required and with the required merit.

5.7. The school, instead of considering the case of the petitioner, resorted to direct recruitment for the second time and appointed the third respondent, who is the daughter of the retired Headmaster Mr.Daniel, to the post of P.G.Assistant. What an illegal and inhuman attitude ?

5.8. Petitioner is questioning the legality and correctness of the action of the school on the following main grounds :

(i) It is incumbent on the part of the school to promote the qualified teacher available within the school only and when there is no suitable candidate available in the school, it can resort to direct recruitment.

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The contention of the petitioner is that it has been violated.

(iii) For a direct recruitment, the school should obtain a prior permission from the Chief Educational Officer, who is the second respondent herein, as per the rules.
The petitioner says that it has not been followed.

(v) The petitioner is more meritorious and an inservice teacher working without any blame or blemish, but to accommodate the daughter of the former headmaster, the school has indulged in illegal direct recruitment and the same is questionable.

(vi) The action of the school is in violation of Rule 15 (4) of the T.N.R.P.S. Rules, 1974, and is liable to be quashed and the appointment of the third respondent is liable to be quashed, as the appointment is contrary to rules.

5.9. The case of the petitioner is that she has submitted a representation, dated 14.05.2001, to the school as well as to the educational officers, requesting to consider her case and post her as P.G.Assistant in Tamil, but the same is not considered. However, the Educational Officers, have not approved the appointment of the third respondent, but the school is insisting for the same. Hence, the petitioner prayed for a writ in nature of mandamus, directing the respondents 1 and 2 to consider the case of the petitioner and promote her as P.G.Assistant.

6. All the respondents contested. First respondent school is the main contestant party.

6.1. Counter of the first respondent discloses that the school is a Christian Religious Minority School, as defined under Section 2 (6) of the Tamil Nadu Private Schools (Regulation) Act,1973, and not a private school, as claimed by the writ petitioner, but it is only a minority school, recognised and aided by the Department. This is a very important admission because the school is receiving aid from the Government and has received recognition from the State.

6.2. The appointment of the petitioner as Tamil Pandit by order dated 28.06.1982 and the subsequent approval of her appointment from 01.06.1984 by the order of the District Educational Officer are admitted. It is stated that the petitioner possessed all the qualifications while working as a teacher through correspondence course and the school was upgraded as higher secondary school and P.G.Assistant post was sanctioned by the Department from 01.06.1991.

6.3. The contention of the respondent is that the case of the petitioner was not considered for appointment as P.G.Assistant (Tamil) on 01.06.1991, as she was not qualified. It is stated that the Headmaster retired due to superannuation on 31.05.2001 and, therefore, Mrs.Jeeva Malar, who was working as P.G.Assistant, was selected and appointed as Headmistress for the school from 06.06.2001 and she is functioning as Headmistress and the school proposes to select a suitable candidate in the resultant vacancy. The waiting list, maintained by the educational

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agency of the school for the post of Tamil P.G.Assistant, was having two members in the list and third respondent is one among them and the school, being a minority school, thought it fit to consider the merit and ability of the teachers working in the school with the qualifications of the persons in the waiting list and while considering the same, the petitioner was also called for interview along with two persons who are not in service of the school, but whose names are mentioned in the waiting list for interview and the petitioner did not appear for the interview.

6.4. It is also stated that the management of the school issued such interview call letter to one Jayakumar Gunapadham, who is a B.T.Assistant with Tamil qualification, and he attended the interview and in the interview, the third respondent was appointed through direct recruitment.

6.5. The other contention of the first respondent is that the third respondent worked in the leave vacancy as P.G.Assistant from 14.08.1993 to 09.11.1993 i.e., for a period of more than a month. It is also stated that the third respondent worked as P.G.Assistant in Santhosa Vidyalaya Matriculation Higher Secondary School, Dohnavur, for nearly a year and also as P.G.Assistant in Blessings Public School at Keerapakkam for less than a year and all the above schools are recognised by the Government. So, considering all the same, she was appointed as P.G.Assistant in Tamil and it is only after conducting written test, interview was made to know the suitability.

6.6. It is stated that the third respondent is having first class in M.A.(Tamil) and she is a regular student, whereas the writ petitioner obtained qualifications through correspondence course and therefore the third respondent is more meritorious in all respects.

6.7. It is contended that the third respondent has already been appointed on 06.06.2001 as P.G.Assistant and there is no vacancy for promoting the petitioner as P.G.Assistant. Therefore, the writ is not maintainable as the petitioner did not challenge the appointment order of the third respondent and her prayer is to consider her case for promotion. Hence, she is not entitled for the relief sought for.

6.8. In para 12 of the counter, it is stated that rule 15 is not applicable and hence there are no merits in the petition.

6.9. The second respondent, Chief Educational Officer, also filed a counter, stating that the writ is not maintainable and he is almost sailing with the first respondent and even the second respondent has taken a plea that Rule 15 (4) is not applicable to the first respondent, being a minority school. This counter affidavit is filed on 05.04.2006 by the second respondent and admittedly this is filed after the pronouncement of the landmark judgment of the Apex court in T.M.A.Pai's case, which I shall refer at a later stage. The second respondent did not admit anywhere in the counter that either they have approved the selection of the third

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respondent for the post or the third respondent or the third respondent has assumed office as P.G.Assistant in Tamil and is working.

6.10. No counter by the third respondent.

7. Heard the arguments of Sri D.Hariparanthaman, learned counsel appearing for the petitioner, and Sri K.Ravichandra Babu, learned counsel for first respondent, Smt.C.K.Vishnu Priya, Govt.Advocate, for second respondent and Sri K.Vijayaraman, learned counsel for third respondent.

7.1. Sri D.Hariparanthaman, learned counsel, advanced arguments for the petitioner and contended that admittedly the petitioner is an inservice candidate and is possessing the required merit and suitability, apart from seniority, and she should be considered for promotion and without following the provisions of Rule 15 (4), the first respondent made selection of the third respondent, which is illegal.

7.2. Learned counsel for the first respondent forcefully contended that the first respondent is a minority school and Rule 15 (4) has no application and the first respondent can appoint a meritorious teacher of its choice and the petitioner cannot challenge the same.

8. Both sides have placed reliance on their arguments and, in support of their contentions, cited certain decisions.

9. The points that arise for my decision are :

1.Whether Rule 15 (4) is applicable to the first respondent ?

2.Whether the petitioner can claim priority for promotion ?

9.1 POINT No.1 : The first respondent is governed by Tamil Nadu Recognised Private Schools (Regulation) Act and it is getting grant from the State Government. It is a minority school. It is stated that certain provisions of the Act and the Rules are not being enforced in terms of the earlier Division Bench judgment and also in terms of the subsequent judgments. However, the Apex Court set right all the controversies through T.M.A.Pai's case.

9.2. Let me see the rule at this stage. It is necessary to reproduce Rule 15 (4) of Tamil Nadu Private Schools (Regulation) Rules,1974, in order to answer the point, which is as follows:

> "15.Qualifications, conditions of service of teachers and other persons :-
>
> (4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.
>
> (ii) Appointments to the various categories of teachers shall be made by the following methods :-
>
> | (i) Promotion from among the qualified teachers in that school

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(ii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.
(c) Direct recruitment."

9.3. At this juncture, it has to be noted that the provisions of Rule 15 (4) were not in the statute book when the earlier Division Bench of this Court decided the constitutional validity of the Act and the Rules framed thereunder and the said Rule 15 (4) came to be introduced after the judgment of the earlier Division Bench before which the constitutional validity of the Act and Rules were the subject matter of challenge. The judgment of the Division Bench is challenged before the Apex Court in an appeal.

9.4. In the meanwhile, the Apex Court settled the law in the case of minority institutions through the landmark judgment in T.M.A.Pai Foundation and others v. State of Karnataka, 2002 (8) Supreme Court Cases 481.

9.5. The 11 knowledgeable and Honourable Judges of the Apex Court through the majority judgment held as follows:

"Q.5 (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof and appointment of staff, employees, teachers and principals including their service conditions and regulation of fee etc. would interfere with the right of administration of minorities ?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

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For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff."

9.6. The then Hon'ble Chief Justice of India Justice B.N.Kirpal formulated five issues to encompass the entire field on the question of scope of right of minorities to establish and administer the educational institutions of their choice under Article 30 (1) read with Article 29 (2), as there was a controversy with regard to the correctness of the decisions in St.Stephen's College case.

9.7. Out of the five issues, two issues are relevant as far as this case is concerned and they are (1) in the case of private institutions (unaided and aided), can there be government regulations and, if so, to what extent ? and (ii) to what extent can the rights of aided private minority institutions to administer be regulated ?

9.8. At para 155, Hon'ble Chief Justice Kirpal, the then Chief Justice of India, speaking for himself and on behalf of Hon'ble Judges Pattanaik,J., Rajendra Babu, J., Balakrishnan, J., Venkatarama Reddi, J., and Pasayat, J., held as follows :

"It will be wrong to presume that the Government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every action of the Government with scepticism, and with the belief that it must be invalid unless proved otherwise, goes against the democratic form of government. It is no doubt true that the Court has the power and the function to see that no one including the Government acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the Government or the authority may have to

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be carefully examined, but it is improper to proceed on the assumption that, merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the Government frames rules and regulations or lays down norms, especially with regard to education, one must assume that unless shown otherwise, the action taken is in accordance with law."

9.9. Their Lordships were pleased to deal with the various aspects with regard to private aided professional institutions of non-minority in paras 71 and 72. While so, other aided institutions are dealt with under para 73 and the observations of the Apex Court are as follows :

"73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the State. Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution."

9.10. It is clearly observed by the Supreme Court that the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by State and such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. While so, Their Lordships have discussed with regard to the minority institutions while answering question 5 (c).

9.11. Thus, the Supreme Court, in Pai's case, referred to above, clearly held that the State or other controlling authorities can always prescribe the minimum qualification, salary, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

9.12. In yet another judgment in S.Devasahayam v. Joint Director, 2004 (1) CTC 388, the Apex Court, while dealing with Tamil Nadu Recognised

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Private Schools (Regulation) Act,1973, and Tamil Nadu Private Schools (Regulation) Rules,1974, and highlighting on Rule 15 (4) of the Rules, observed in para 2 as follows :

> "2. In order to find out whether the view taken by the High Court and the Tribunal is erroneous, it is necessary to examine the matter with reference to the relevant rules. Rule 15 (4) (i) (d) provides that the post of Head Master could be filled up only amongst the categories stated therein and they are from the category of (1) Head Masters of High Schools; (2)Post Graduate Assistants in academic subjects; (3) Post Graduate Assistants in languages provided that they possess the prescribed qualifications. It cannot be seriously disputed that the appellant is not a Post Graduate Assistant and he does not come under the feeder category. Merely because he possesses the necessary qualifications by itself will not enable him to claim to be appointed as a Head Master. It is on this basis the Appellate Authority, the learned Single Judge of the High court held that the appellant is not entitled to be appointed as the Head Master."

9.13. Therefore, it is clear that the Apex Court is holding that Rule 15 (4) (i) (d) is applicable to the minority aided schools of the Government.

9.14. In yet another judgment in Civil Appeal Nos.1521-56 and 3042-91 of 1979 between State of Tamil Nadu and another v. Socy.of Bro.of Sacred Heart of J.& Anr., the Apex Court observed as follows :

> "The several questions raised in these matters are covered by the decision of a Constitution Bench of this Court in Writ Petition No.317/1993 - T.M.A.Pai Foundation and Ors etc. Vs. State of Karnataka & Ors.etc. and connected batch decided on 31st October,2002. Since larger questions have been decided by this Court, it becomes necessary for the High Courts to re-examine the matters which have been decided and which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the matters are remitted to the High Court for fresh consideration in accordance with law.
>
> ....It is made clear that all statutory enactments, orders, schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A.Pai Foundation's case decided on 31-10-2002. As and when any problem arises the same can be dealt with by an appropriate Forum in an appropriate proceedings."

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9.15. Therefore, through its judgment dated March 4, 2003, the Apex Court, presided over by His Lordship Chief Justice S.Rajendra Babu, clarified that several questions of the minority institutions are decided in T.M.A.Pai Foundation case and the High Courts have to examine all such matters and decide the issues strictly in accordance with T.M.A.Pai Foundation case.

9.16. Therefore, in the light of such established legal position, it follows that the appointment of a teacher in the first respondent school shall have to be made by following the methods stipulated in Rule 15 (4) (ii) of the Tamil Nadu Private Schools (Regulation) Rules,1974, and there may not be a school committee and that the provisions with respect to formation of a school committee may not apply, but the appointment or promotion to various categories of teachers is required to be made by following the methods prescribed in Rule 15 (4) of the Rules and any deviation would result in frustration among teachers employed in the minority schools, who are also being paid on par with the teachers employed in the aided institutions as well as the institutions run by the State Government.

9.17. In terms of Rule 15 (4) (i), a promotion shall be made on merit and ability, seniority being considered only when merit and ability are approximately equal. Rule 15 (4) (ii) mandates that the appointment to the various categories of teachers shall be made firstly by promotion from among the qualified teachers in that school and if no qualified and suitable candidate is available, then the other mode of Rule 15 (4) (a) (b) and (c) can be resorted to. (emphasis supplied)

9.18. A plain reading of Rule 15 (4) (i) says that promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

9.19. The Legislature, in its wisdom, by mentioning the word 'seniority', conveyed its intention that the inservice persons shall be considered for promotion at the first instance. It is clarified that the case of the inservice persons is to be considered purely on merit and ability and seniority is no criterion, as the merit and ability is the priority. It is also clarified that when merit and ability are approximately equal, seniority shall be considered. Hence, it is clearly conveyed that merit, ability and seniority are to be considered for promotion and thereafter the direct recruitment can be resorted to.

9.20. Further, Rule 15 (4) (ii) clarifies that appointments to various categories of teachers shall be made by following the methods and the methods are provided under (i) and (ii) and they are (i) promotion from among the qualified teachers in that school and (ii) if no qualified and suitable candidate is available by method (i) above, then the appointments shall be through (a) (b) or (c) of Rule 15 (4) (ii) (ii).

9.21. Therefore, it is incumbent upon the aided school, whether

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it is minority or non-minority, to follow the above rules and it has to consider the case of all the teachers, who are qualified and who are in service and if the school does not find any person to be appointed, then only it should go for appointment of other persons as contemplated under (a) (b) and (c) of Rule 15 (4) (ii) (ii). When the rule itself is clarifying that it is incumbent upon the school that appointment shall be made by promotion from among the qualified teachers in that school and if no qualified and suitable candidate is available, then the appointment either by direct recruitment or by appointing teachers from other schools alone should be considered.

9.22. The Court of Law is not supposed to substitute its views by saying that a teacher can be appointed either by direct recruitment or from any other school and that itself amounts to disqualifying the inservice candidates.

9.23. In the considered opinion of this Court, the candidature of the inservice teachers is to be first decided and there should be a finding by the school that a suitable candidate is not available for promotion and then only the other three methods as mentioned in (a) (b) and (c) of Rule 15 (4) (ii) (ii) are to be adopted.

9.24. In the instant case, the first respondent has also invited the petitioner to attend the interview. That itself indicates that the first respondent did not reject the right of the petitioner to compete for promotion. If the first respondent is of the opinion that there are no suitable candidates available with it, there is no need for the first respondent to call the petitioner as well as one Mr.Jayakumar Gunapadham, who is also B.T.Assistant, with M.A.(Tamil) qualification, to appear for interview and compete with two outsiders by name Esther Viji Janner and the third respondent.

9.25. Therefore, the facts and circumstances in this case clearly establish that the petitioner and the said person, namely, Jayakumar Gunapadham, who are in service, qualified, already working as teachers and eligible for promotion, were called for interview along with two outsiders, which is not permissible under Rule 15 (4) (i) and (ii) It is the duty of the first respondent to examine the eligibility of the petitioner and the said other person namely Jayakumar Gunapadham and it should decide who is more meritorious and who is having more capability and ability to be promoted despite their seniority and if the first respondent comes to the conclusion that one of them is fit, such a person should be appointed and if both of them are unfit, there should be a clear finding on them and then resort for direct recruitment from the panel or out of panel or by notification etc.

9.26. Without doing so, the first respondent has resorted to all illegal methods. Therefore, in the considered opinion of this Court, the petitioner is entitled to be considered for promotion.

9.27. It is admitted that the petitioner is working as a teacher

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and she is having required experience and she is also qualified. When compared to third respondent, the petitioner is undoubtedly a better experienced person and with equal qualification. Promotion from among the qualified eligible inservice teachers is the first preference and the petitioner is entitled to claim as per the statutory rule.

9.28. After analysing the entire case law as well as the pronouncements of various High Courts and also the Apex Court, it is clearly held that the State can prescribe the minimum qualifications and other conditions on the merit of an individual for being appointed as a teacher in the educational institution including the first respondent. Therefore, Rule 15 (4) will apply to all kinds of minority institutions, which receive grant from the State.

9.29. In order to strengthen my conclusions, I would like to reproduce some of the judgments of this Court in this respect :

M.Chelladorai v. Joint Director of School Education & Others (2003 Writ L.R.304) :

"22.

97.....the Division Bench judgment of this Court in W.A.No.1179,242 of 1993 etc., in S.Sundaram Vs. The Secretary CSI Diocese, Madras and others decided on 6.9.1994 the decision in D.Singarayan and others Vs. Govt. of T.N., made in W.P.No.6607 of 1991 which is dated 5.9.1995 the decision of Jayasimha Babu, J., in Sham Dr. Vs. The Commissioner of Collegiate Education (1998 (1) CTC 609 = 1999 -2- L.W.217) as well as the above referred Supreme Court cases this court holds that the enforcement of rules or regulations relating to recruitment and promotion of teachers other than Headmaster/Headmistress in other words implementation of Rule 15 (4) (i) (ii) in no way violates the constitutional guarantees, nor there is any infraction of Article 30 (1) of the Constitution."

Q.5 (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof and appointment of staff, employees, teachers and principals including their service conditions and regulation of fee etc. would interfere with the right of administration of minorities ?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be

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complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of management over the staff, government/university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed."

9.30. In the circumstances, with due respect to some of the judgments of this Court, which have taken a view that Rule 15 (4) (ii) has no application or by inviting applications amounts to ignoring the ability, capability and the merit of the inservice candidates or the direct recruitment is permissible without even considering the suitability of the inservice candidates and non-participation of the inservice teacher to compete with the outsiders in the interview makes the case of the inservice teachers as invalid, I beg to differ, in the light of the decisions of the Apex Court on Rule 15 (4) (i) and (ii) and it is mandatory for the first respondent to follow it without any deviation.

9.31. In the foregoing circumstances, while following the earlier judgments of this Court as well as the lad laid down by the Apex Court by a Larger Bench more particularly the decision of the Larger Bench in T.M.A.Pai Foundation case, this Court answers both the points in favour of the writ petitioner.

9.32. In the result, I hold that Rule 15 (4) is applicable and

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enforceable to the first respondent and, therefore, the selection or appointment of the third respondent through direct recruitment cannot be sustained at all and the case of the petitioner is to be considered on priority, as laid down by the statutory rule. Therefore, the first respondent is directed to consider the case of the petitioner within 30 days from the date of receipt of copy of this order and the second respondent is directed to supervise the process and method adopted by the first respondent in considering the case of the petitioner as well as all other eligible candidates in the school strictly in accordance with Rule 15 (4) and appoint such inservice teacher on merit, ability and seniority.

9.33. This Court notices that the petitioner possesses the required qualification and experience. Therefore, the first respondent now cannot escape and come to its own conclusion that the petitioner is not eligible for appointment. As such, the first respondent is directed to promote the petitioner and appoint her in the vacancy that has arisen consequent to the promotion of Mrs.Patti Jeeva Malar as Headmistress.

9.34. The argument of the learned counsel for the respondents is that the writ petition seeking for a mandamus is not maintainable as the petitioner should have challenged the appointment and promotion of the third respondent and the same is not challenged.

9.35. I do not accept this contention. When the petitioner is praying for a writ of mandamus directing the first respondent school to appoint her as a P.G.Assistant in Tamil in the vacancy that arises due to the promotion of Mrs.Patti Jeeva Malar, it is nothing but canceling the illegal appointment of the third respondent, ignoring the legitimate right of the petitioner. If a direction by way of mandamus is given, it is nothing but cancellation of the appointment of the third respondent. Further, the prayer for mandamus is modified to that of certiorarified mandamus by an order of this Court on 17.01.2005. Hence, the said contention does not stand.

9.36. In this case, the petitioner is not served with an order of appointment of the third respondent. In fact, the contention of the petitioner is that the second respondent has not approved the appointment of the third respondent. Therefore, the petitioner is well founded in couching the relief and when the petitioner is challenging the validity of selection or appointment of the third respondent and when the petitioner is entitled to the relief that she is entitled to be appointed, all surrounding technical objections are to be thrown out and when a case has been made out for interference by this Court by invoking its power under Article 226 of the Constitution, this Court can very well issue a writ of certiorari, if a case is made out. When the first respondent is representing that the appointment of third respondent to the post of P.G.Assistant (Tamil) in the first respondent school is completed and when this Court comes to the conclusion that it is in violation of Rule 15 (4), this Court can issue a writ direction by way of certiorari and quash the proceedings of the first respondent in appointing the third respondent.

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9.37. Under the circumstances, the points are answered in favour of the petitioner. A writ of mandamus is issued, directing the first respondent to promote and post the petitioner as P.G.Asssitant in Tamil and a writ of certiorari is also issued, quashing the proceedings of the first respondent, appointing the third respondent in the said post of P.G.Assistant in Tamil, in violation of Rule 15 (4). The first respondent has to comply with these directions within four weeks from the date of receipt or production of copy of this order by the writ petitioner, whichever is earlier. This Court also directs the first respondent to appoint the writ petitioner retrospectively, namely, from the date on which the third respondent was appointed as P.G.Assistant i.e., 01.06.2001. However, the petitioner will not be entitled to the difference of wages during this period and the petitioner will be entitled to the salary attached to the post from the date of her assumption of office, but for all other purposes, the petitioner will be deemed to have been appointed with effect from 01.06.2001.

10. With the above directions, this Writ Petition is allowed, with costs of Rs.10,000/- (Rupees Ten Thousand only), to be payable by the first respondent to the petitioner within thirty days from the date of receipt of copy of this order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

To
1. The Chief Educational Officer,
Tuticorin.

2. The Correspondent,
Eka Ratchagar Sabai Higher Secondary School,
Salaiputhur,
Asirvathapuram (P.O.),
Tuticorin District.

+ 1 CC To Mr. D.Hariparanthaman, Advocate SR NO. 355
+ 1 CC To Mr. K.Ravichandrabaabu, Advocate SR NO. 268
+ 1 CC to the Government Pleader, High Court, Madras SR NO 619

WRIT PETITION No.11120 OF 2001

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